

Oil and Gas Leases: Cancellation

An oil and gas lease issued to an offeror who has indicated on his drawing entry lease offer that another party has an interest therein will be canceled if the written statements of interest required by regulation are not submitted within the prescribed 15 days after the date of the filing of the offer.

Oil and Gas Leases: Rentals

Rental paid for the first year of the lease term is earned upon execution of the lease on behalf of the United States and may not be refunded or pro-rated if the lease is subsequently canceled during the first year because of the lessee's non-compliance with applicable regulations.

IBLA 70-104 :

M 13071

DOMINIC J. REPICI ET AL.

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: Oil and gas lease canceled
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: Affirmed

DECISION

Dominic J. Repici and Colonel B. F. Hawkins have appealed from the October 23, 1969 decision of the Chief, Branch of Mineral Appeals, Bureau of Land Management. That decision affirmed the action taken by the Montana land office on July 11, 1969, canceling the 80-acre oil and gas lease which had been issued in the name of Mr. Repici on July 7, 1969.

Review of the record discloses that Mr. Repici filed simultaneous oil and gas drawing entry card lease offer on June 23, 1969, for Parcel No. 64. On the back of the card under "Other Parties In Interest" was entered "Col. B. F. Hawkins," followed by a mailing address. This entry was written directly over the following caveat:

NOTE: Compliance must be made with the provisions of 43 CFR 3123.2. 1/

That regulation requires that each lease offer must be accompanied by:

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth

1/ Since renumbered 43 CFR 3102.7; 35 F.R. 9680.

the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled.

The Repici offer was successful and a lease was executed on behalf of the United States and mailed. The \$40 advance rental was deposited in an "earned" account. When the 15-day period for filing the separate statement of interest and qualification elapsed without its receipt, the land office canceled the lease and notified Mr. Repici of its action.

Appellants argue that Col. Hawkins was away on temporary duty with the Air Force and that they should not be penalized for noncompliance occasioned by government service. They further argue that they "are not a professional oil company with a battery of expert lawyers," but small private investors, the public, who are entitled to more consideration.

The short answer to this contention is that there cannot be different requirements for different classes of offerors, nor can a single set of requirements be administered more liberally with regard to some than as to others.

Under the circumstances, cancellation of the lease and retention of the annual rental was mandatory.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision is affirmed.

Edward W. Stuebing, Member

We concur.

Francis E. Mayhue, Member

Martin Ritvo, Member.

